



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC



OFFICE OF THE ASSISTANT SECRETARY

MAY 23 1995

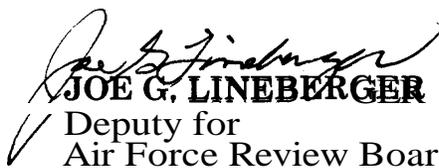
MEMORANDUM FOR THE EXECUTIVE DIRECTOR, AIR FORCE BOARD
FOR CORRECTION OF MILITARY RECORDS

UB : FB Application of [REDACTED]

Subject applicant requested the Enlisted Performance Report (EPR) closing 9 October 1990 be declared void and removed from his records on the basis that the rater used it as a vehicle for punishment. The majority of the panel concluded that the contested report was not invalidated by a possible personality conflict between the rater and applicant, nor was it used as a means of retribution. However, after thoroughly reviewing all the documentation pertaining to this appeal, I agree with the minority member of the panel that relief is warranted.

In this respect, I note the commander provides a strong supporting statement indicating a severe personality clash did exist between the rater and the applicant. The evidence demonstrates the rater's vindictiveness was such that senior officers felt compelled to become involved in an effort to salvage the applicant's career. Furthermore, the contested EPR is totally inconsistent with the applicant's prior and subsequent performance. Specifically, the report closing 28 January 1990, written by the same rater and prior to the applicant's IG complaint against the rater, indicates that his performance was superlative.

Given these circumstances, I believe the applicant should be given the benefit of the doubt. Therefore, I direct that the report closing 9 October 1990 be declared void and applicant be provided supplemental promotion consideration to the grade of senior master sergeant for all appropriate cycles beginning with cycle 93S8.


JOE G. LINEBERGER

Deputy for
Air Force Review Boards

94-02047



DEPARTMENT OF THE AIR FORCE
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OFFICE OF THE ASSISTANT SECRETARY

AFBCMR 94-02647

MAY 23 1995

MEMORANDUM FOR THE CHIEF OF STAFF

Having received and considered the recommendation of the Air Force Board for Correction of Military Records and under the authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that the Senior Performance Report, AF Form 911, rendered for the period 29 January 1990 through 9 October 1990 be, and hereby is, declared void and removed from his records.

It is further directed that he be provided supplemental consideration for promotion to the grade of senior master sergeant for all appropriate cycles beginning with cycle 93S8.

If AFMPC discovers any adverse factors during or subsequent to supplemental consideration that are separate and apart, and unrelated to the issues involved in this application, that would have rendered the applicant ineligible for the promotion, such information will be documented and presented to the board for a final determination on the individual's qualification for the promotion.

If supplemental promotion consideration results in the selection for promotion to the higher grade, immediately after such promotion the records shall be corrected to show that he/she was promoted to the higher grade on the date of rank established by the supplemental promotion and that he/she is entitled to all pay, allowances, and benefits of such grade as of that date.


JOE G. LINEBERGER
Deputy for
Air Force Review Boards

94-02647

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 94-02647

COUNSEL: None

HEARING DESIRED: Yes

MAY 23 1995

APPLICANT REQUESTS THAT:

The Enlisted Performance Report (EPR) rendered for the period 29 January 1990 through 9 October 1990 be declared void.

D T T:

The contested EPR was used as a vehicle for punishment as the result of an August 1990 IG grievance concerning the rater. The report failed to include all accomplishments during the rating period and specific achievements were deliberately omitted.

In support of his appeal, applicant provides documents such as a unit effectiveness inspection conducted by the 14th Air Division IG on 4-14 February 1990, along with letters of appreciation, which he believes demonstrate his achievements and the quality of his performance. Also provided is a supporting statement from the squadron commander during the rating period in question. The squadron commander indicates that, because of problems between the applicant and the rater, the commander and senior enlisted advisor of the 14th Air Division intervened twice to "save" applicant's career. Based on the rater's vindictive actions, he has serious doubts about the validity of the EPR. He believes there was a problem between the rater and the applicant; the applicant was trying to put it behind, but the rater was not. He is totally convinced the rater wanted to damage the applicant's career at any cost. He recommends the contested report be withdrawn.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The applicant is currently serving in the Regular Air Force in the grade of master sergeant.

The applicant twice appealed the contested report under the provisions of AFR 31-11. His request to void the report was denied by the Airman Personnel Records Review Board (APRRB) on 3 February 1992 and again on 8 October 1993; however, the APRRB

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directed that the number of days of supervision on the contested EPR be changed from 254 to 223 based on applicant's 31-day TDY.

EPR profile since 1985 reflects the following:

<u>OVERALL EVALUATION</u>	
8 Jun 85	9
11 Jan 86	9
11 Jan 87	9
11 Jan 88	9
11 Jan 89	9
28 Jan 90	5 (New System)
* 9 Oct 90	4
21 May 91	5
21 May 92	5
21 May 93	5
21 May 94	5

* Contested report.

AIR STAFF EVALUATION:

The Chief, SSBs & BCMR Appeals Section, AFMPC/DPMAJA1, reviewed this application and states that due to unusual work situations, members are often physically separated from their reporting officials. Sometimes only the results of work or only information obtained from other sources is available. They do not find a lack of direct observation as a sufficient reason to render an evaluation invalid. Applicant provides no input from those of his rating chain or other evidence showing that an error occurred or that an improper evaluation was provided. His allegation that several significant accomplishments were omitted from the EPR is not a reason to void the report. The same rater prepared applicant's previous report (28 Jan 90), which had an overall "5" and is not contested. Insofar as the allegation of damage to his career is concerned, a report is not in error or unjust solely because it may impact future promotion or career opportunities. Even though he alleges the contested EPR was a form of retribution for an IG grievance filed in August 1990, there is no evidence it was. They recommend denial.

A complete copy of the evaluation is attached at Exhibit C.

The Chief, Inquiries/Special Actions Section, AFMPC/DPMAJW1, also reviewed this application and states that should the Board void the contested report in its entirety, upgrade the overall rating, or make any other significant change, the applicant will be entitled to supplemental promotion consideration to the grade of senior master sergeant commencing with cycle 93S8, providing he is otherwise eligible.

A complete copy of their evaluation is attached at Exhibit D.

APPLICANT'S REVIEW OF AIR STAFF EVALUATION:

The applicant reviewed the advisory opinions and states the supporting documentation he provided is proof that the EPR is flawed and not formulated on the results of his work. There is never any mention in his documentation that this report was not by direct observation, for indeed it was. On the contrary, he contends that based on direct observation, specific noteworthy accomplishments were purposely omitted due to the IG grievance filed referencing the rater and indorser. The Air Staff is incorrect in stating "applicant provides no input from those of his rating chain." Input was submitted from the unit commander, whose signature can be witnessed in block 9 of the EPR. with reference to the report ending 28 January 1990, he asks what would make two individuals who thought so highly of him in January change so drastically by October, just nine months later. The change in disposition was a direct result of the IG grievance he filed exposing fraud, mismanagement and waste, citing both the rater and the rater's rater as accomplices.

Applicant's complete response is attached at Exhibit F.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.
3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. The supporting statements from the commander and the Lowry training chief were noted; however, the majority of the Board is not persuaded that the contested EPR should be voided. Applicant argues, in part, that the report is flawed because significant achievements have been omitted; nevertheless, it is the responsibility of the rater--not the applicant--to determine which achievements are to be included in a performance evaluation. While a personality conflict may have existed between the applicant and the rater, the majority of the Board does not believe this inherently makes the report as rendered an inaccurate assessment. Furthermore, contrary to applicant's allegation, the evidence provided fails to demonstrate that the EPR in question was used in retribution against an IG grievance. In view of the above findings, and in the absence of substantial evidence to the contrary, the majority of the Board finds no compelling basis to recommend granting the relief sought in this application.

4. The applicant's case is adequately documented and it has not been shown that a personal appearance with or without counsel will materially add to our understanding of the issue(s) involved. Therefore, the request for a hearing is not favorably considered.

RECOMMENDATION OF THE :

A majority of the panel finds sufficient evidence of error or injustice and recommends the application be denied.

The following members of the Board considered this application in Executive Session on 2 March 1995, under the provisions of AFR 31-3:

Mr. G. Hammond Myers III, Panel Chairman
Ms. Karen Bingo, Member
Mr. Gregory H. Petkoff, Member

By a majority vote, the Board recommended denial of the application. Ms. Bingo voted to correct the records, but does not wish to submit a Minority Report. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 16 May 94, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFMPC/DPMAJA1, dated 20 Jul 94.
- Exhibit D. Letter, AFMPC/DPMAJW1, dated 1 Aug 94.
- Exhibit E. Letter, AFBCMR, dated 2 Aug 94.
- Exhibit F. Letter, Applicant, dated 18 Aug 94.


G. HAMMOND MYERS III
Panel Chairman



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE MILITARY PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TX 78150-6001

20 JUL 1994

MEMORANDUM FOR AFECMR

FROM: HQ AFMPC/DPMAJA1
550 C Street West, Suite 8
Randolph AFB TX 78150-4710

SUBJECT: AFR 31-3 Application-- [REDACTED]

Requested Action. Void enlisted performance report (EPR) closing 9 Oct 90.

Basis for Request. Applicant states, "The performance report failed to include all accomplishments during this period. ..used as a way to get back for an IG complaint exposing fraud, mismanagement and waste."

Recommendation. Deny.

Facts and Comments.

a. Appeal is timely. Similar appeals under AFR 31-11, Correction of Airman and Officer Evaluation Reports, 15 Mar 90, were denied by the Airman Personnel Records Review board (APRRB) on 3 Feb 92 and 8 Oct 93.

b. AFR 39-62, The Enlisted Evaluation System (EES), 1 May 89, is the applicable regulation.

c. Applicant states, "It [EPR] was improper and unjustly prepared as a result of an IG grievance filed in August 1990. The EPR was improper because it deliberately omitted my true character and failed to highlight my outstanding performance during this period. It was unjust because it contained ratings and comments that caused harm and damage to my career. . . ." In his memorandum to the AFBCMR, he states, "The EPR was not based on the required observation and evaluation by [rater]."

(1) What the rater's rationale may have been for this evaluation is unknown; however, he apparently determined applicant's performance had not merited an overall "5" report. Due to unusual work situations, members are often physically separated from their reporting officials. While direct observation is the optimum, sometimes only the results of work are available and at other times, only information obtained from other sources is available.

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(a) Reporting officials are to ensure all these factors are considered so a fair and objective evaluation can be rendered. As a result, we do not find a lack of direct observation as a sufficient reason to render an evaluation invalid.

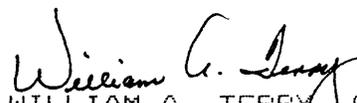
(b) Regardless, applicant provides no input from those of his rating chain or other evidence showing that an error occurred or that an improper evaluation was provided.

(2) Applicant's allegation that several significant accomplishments were omitted from the EFH is not a reason to void the report. Due to limited space allotted for comments on the EPR form, raters; are often unable to mention each and every single accomplishment. They must sometimes document only those which substantially add to a report. In this case, we note the rater used all the allotted space. In the absence of confirmation to the contrary, we conclude the rater was fully aware of applicant's accomplishments during the reporting period.

(3) We also note that this same rater had prepared applicant's previous report closing 28 Jan 90--that report was an overall "5." However, it isn't contested as is this overall "4" report. Insofar as the allegation of damage to his career is concerned, a report is not in error or unjust solely because it may impact future promotion or career opportunities. Applicant must prove the contested report is in error or unjust based on its contents, not career impact. This he has failed to do.

d. In his 17 Jun 93 letter, the 9 CPTS/CC states, "... there was a personality conflict between the two of them [applicant/rater]. ... [rater] held a grudge against him, and would go out of his way to hurt [applicant's] career." He also provides statements of appreciation and recommendation from other individuals not in the rating chain of the contested EPR. None of these, however, explain how the report is specifically flawed. Even though the applicant alleges the contested EFH was a form of retribution for an IG grievance filed in Aug 90, there is no evidence it was.

Summary. Based on evidence provided, our above recommendation is considered valid.


WILLIAM A. TERRY, GS-9
Chief, SSBs & BCMP Appeals Sec
Dir of Personnel Program Mgmt

cc:
SAF/MIBR

94-02047



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE MILITARY PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

1 AUG 1994

MEMORANDUM FOR AFBCMR

FROM: AFMPC/DPMAJW1
550 C Street West, Ste 09
Randolph AFB TX 78150-4711

SUBJECT: Application for Correction of Military Records (MSgt [REDACTED])

Requested Action. The applicant is requesting the AFBCMR void his Enlisted Performance Report (EPR) closing 9 Oct 90. We will address the supplemental promotion consideration issue should the request be approved.

Reason for Request. The applicant claims the EPR was used as a vehicle for punishment for filing an IG complain.

Facta. See attached AFMPC/DPMAJA1 Ltr, 20 Jul 94.

Discussion. The first time the contested report was considered in the promotion process was cycle 9388 to SMSgt (promotions effective Apr 92-Mar 93). Should the AFBCMR void the contested report in its entirety, upgrade the overall rating, or make any other significant change, providing he is otherwise eligible, the applicant will be entitled to supplemental promotion consideration beginning with cycle 9388.

Recommendation. See discussion above concerning any supplemental promotion consideration the applicant may be entitled. We defer to the recommendation of AFMPC/DPMAJA1.

Chief, Inqs/Spec Actions Section
Airman Promotion Branch

Atch:
AFMPC/DPMAJA1 Ltr, 20 Jul 94, w/Atchd Case File

cc:
SAF/MIBR

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